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The Commissioner of Police v Harland WA 41/06 (Wellington) [2006] NZERA 673 (20 March 2006)

Last Updated: 25 November 2021

Determination Number: WA 41/06

File Number: 5023806

Under the [Employment Relations Act 2000](#)

BEFORE THE EMPLOYMENT RELATIONS AUTHORITY ER AUTHORITY WELLINGTON OFFICE

BETWEEN The Commissioner of Police (Applicant)

AND Andrew Harland (Respondent)

REPRESENTATIVES P Gunn for Applicant

P Brosnahan for Respondent

MEMBER OF AUTHORITY G J Wood

INVESTIGATION

MEETING By way of submissions received by 27 February 2006

DATE OF DETERMINATION

20 March 2006

DETERMINATION OF THE AUTHORITY

1. The Commissioner of Police has applied to have its employment relationship problem with Mr Andrew Harland removed to the Employment Court for it to hear and determine it without the Authority investigating the matter. Mr Harland has filed his own problem by way of counterclaim but has not taken any steps to have that problem removed.
2. Mediation has already taken place between the parties, but unfortunately was not successful in resolving the problem between them.
3. This application is made on the grounds that an important question of law is likely to arise other than incidentally ([s.178](#) (2) (a)). The important question of law is said to be whether Mr Harland, a former police officer, remains a police officer notwithstanding notice of compulsory disengagement served on him pursuant to s.28C of the [Police Act 1958](#). It was also submitted that the case and the question of law was of such a nature and such urgency that it is in the public interest that it be removed immediately to the Court (s.178 (2) (b)).
4. The question of law is said to be important because it bears directly on the statutory process of compulsory medical disengagement in the Police and the way in which

disengagements are conducted. It was noted that this question could apply potentially to all sworn police and also could open

up cases that the Commissioner considered settled.

5. It was submitted that because of the statutory powers that police officers have it is not in the public interest for there to be ongoing disagreement between the Commissioner and Mr Harland as to whether he is still a police officer.
6. Mr Gunn, on behalf of the Commissioner, noted that in *Hawkins v New Zealand Police* (unreported, Couch J, WC 19/05, 1 September 2005) the Employment Court held that similar questions to this one were far from settled and noted that determining those questions would play a key role in determining the outcome.
7. Mr Gunn also relied on the factors set out in *Andrew v Commissioner of Police* (unreported, Colgan J, 29 July 2003, CC21/03), which favoured removal and were also present in this case.
8. Mr Harland declined to make any submissions in response to this application.
9. I do not accept that there is such urgency in this case, whether or not it is in the public interest that it be removed to the Court, to meet the test in s.178 (2) (b), as Mr Harland was given his notice of compulsory disengagement on 1 October 2004. I do accept, however, that an important question of law is likely to arise in the matter other than incidentally. That question of law is as submitted by the Commissioner and relates to the effect of a notice of compulsory disengagement on a police officer's employment. As the determination of this question is likely to be determinative of the case it therefore follows that it will arise other than incidentally.
10. Where the Authority considers that a ground for removal is made out, it still has a residual discretion as to whether or not to remove the particular employment relationship problem to the Court. There are, however, no particular factors, other than that the Authority could most likely deal with the matter more quickly than the Court, which would militate against removal. Given the nature of this case and the importance of the question of law, I consider that the particular factor against removal is outweighed by those in favour of removal.
11. I therefore remove the employment relationship problem filed by the Commissioner of Police with Andrew Harland (5023806) to the Court for the Court to hear and determine it without the Authority investigating the matter.

G J Wood

Member of Employment Relations Authority

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